

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 24-11-1995.

CRIMINAL APPEAL NO. 1058 OF 1988

For Approval and Signature:

THE HON'BLE MR. JUSTICE H.R. SHELAT.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether Their Lordships wish to see the fair copy of Judgment ?
4. Whether this case involves substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

Mr. S.T. Mehta, Addl. Public Prosecutor for the appellant.

Mr. V.S. Shah, Advocate for the respondents. (On record)

Coram: H.R. Shelat, J.

(24-11-1995)

ORAL JUDGMENT:

The then learned Judicial Magistrate, First Class at Mehsana, delivering the judgment on 1st October 1988, in Criminal Case No. 1047 of 1987 on his file, acquitted the respondents, of the offences under Section 7(1) and Section 16 of the Prevention of Food Adulteration Act. The prosecution being aggrieved has preferred this appeal.

2. Mr. I.M. Raval is serving as the Food Inspector. On 17-12-1986 at 16.30 hours he went to the firm of respondents where edible items are sold. The respondents were also selling confectionaries. Mr. I.M. Raval suspected that the confectionaries were of sub-standard and adulterated. He therefore purchased confectionary paying the consideration, and dividing the same into three equal parts packed in the covers. The covers were sealed and were then sent to the laboratory for

analysis. The expert reported that the confectionaries sent to him for analysis were adulterated and injurious to the general public. After the receipt of the report necessary papers were prepared and sanction to prosecute the respondents was obtained and the complaint then came to be filed before the learned Judicial Magistrate, First Class at Mehsana, who recorded the evidence adduced by the complainant, and then giving every reasonable opportunity to both to submit their say, delivered the judgment and acquitted the respondents. Challenging the judgment of acquittal, the present appeal has been filed by the State.

3. When the appeal was called out for hearing, though the respondents are served, no one has appeared. I have therefore heard Mr. Mehta, the learned Additional Public Prosecutor representing the appellant. According to him, the learned Magistrate disposed of the matter only on one point regarding grant of sanction to prosecute and that was the error on his part. Let me mention what made Mr. Mehta, learned A.P.P. to argue in that regard. According to the learned Judicial Magistrate the sanction was defective and that defect was going to the root of the case. While according the sanction, the authority empowered to grant sanction ought to have assigned the reason, as to how the prosecution was in the interest of the general public. When those reasons were not assigned according to the Judicial Magistrate First Class, the sanction was no sanction in the eye of law, and when that was the case the whole proceeding was liable to be quashed, and on that ground alone the learned Magistrate preferred to acquit the respondents.

4. In this case therefore the points that arise for consideration are not even few, but only one, and it is about sanction. Whether while according the sanction the sanctioning authority is required to assign the reason that prosecution is in the interest of public has to be determined. It may be stated at this stage that the learned Magistrate has no doubt delivered the judgment and held that the confectionaries seized were adulterated but for coming to the conclusion he has assigned no reason and therefore there is no effective appreciation of evidence on record on his part and simply he has scrawled. But that apart whether acquittal is sustainable on the reason the learned Magistrate has given, has to be examined.

5. The point is set at rest by this Court as back as in 1991. This Court in the case of Harshvadan Dahyalal Sevak, Food Inspector vs. Nareshbhai Devandas Vaghvani & Anr., - 1991 (2) G.L.H.615 had the occasion to deal with the point raised and considering all relevant provisions of the Act applicable, this Court came to the conclusion that it is not necessary to record the reasons while according the sanction to prosecute under the Prevention of Food Adulteration Act. When the point is set at rest by this Court, in view of that decision the order of

acquittal recorded by the learned Magistrate cannot be maintained and the same is required to be quashed. It seems no one drew the attention of this decision to the learned Magistrate, otherwise certainly the learned Magistrate would have not passed the order in question.

6. When it is found that reasons are not required to be given while according the sanction in this case the sanction cannot be held bad. When the sanction is not bad, the case has to be judged on the points of facts and law that arise for consideration, but the same has not been done by the learned Magistrate below. Consequently, for considering the rival submissions on the points of facts and law that are required to be determined, the matter will have to be sent back setting aside the order of acquittal. The appeal is, therefore, required to be allowed. It is accordingly allowed. The judgment and order acquitting the respondents are hereby set aside. The case be sent back to the learned Magistrate for hearing and disposal in accordance with law. The learned Magistrate shall grant reasonable opportunities to both, and then dispose of the case according to law.

7. The parties to appear before the the learned Judicial Magistrate, First Class at Mehsana on 12th December 1995 at 11.00 a.m.

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